

## **CHAPTER 2**

### **ADMINISTRATIVE REMEDIES**

#### **TABLE OF CONTENTS**

TABLE OF CONTENTS .....	2-1
TABLE OF CASES .....	2-2
I. INTRODUCTION AND OVERVIEW .....	2-5
II. POLICY BASIS FOR SUSPENSION AND DEBARMENT .....	2-6
III. HISTORICAL BACKGROUND .....	2-6
IV. SUSPENSION .....	2-11
V. DEBARMENT .....	2-13
VI. SCOPE OF SUSPENSION AND DEBARMENT .....	2-17
VII. PUBLICATION/EFFECT OF SUSPENSION AND DEBARMENT .....	2-18
VIII. DUE PROCESS .....	2-19
IX. EFFECT ON A SUBSEQUENT CRIMINAL PROSECUTION .....	2-23
X. TRENDS .....	2-23
XI. MISCELLANEOUS ISSUES .....	2-25
XII. ADMINISTRATIVE SETTLEMENT AGREEMENTS .....	2-25
XIII. SUSPENSION/DEBARMENT/SUMMARY AND CONCLUSION .....	2-27
XIV. COORDINATION OF REMEDIES .....	2-27
XV. CONCLUSION .....	2-32

**LTC Richard B. O’Keeffe, Jr.**  
**Procurement Fraud Course**  
**3 June 2002**

## TABLE OF CASES

### U.S. Supreme Court

<u>Hudson v. United States,</u> 118 S. Ct. 488 (1997) .....	2-23
--	------

### U.S. Courts of Appeals

<u>Caiola v. Carroll,</u> 851 F.2d 395, 398 (D.C. Cir. 1988) .....	2-6
<u>Cubic Corp. v. Cheney,</u> 914 F.2d 501 (D.C. Cir. 1990) .....	2-20
<u>Eddleman v. U.S. Dep't of Labor,</u> 923 F.2d 782 (10th Cir. 1991) .....	2-25
<u>Gonzalez v. Freeman,</u> 334 F.2d 570 (D.C. Cir. 1964) .....	2-6
<u>Horne Bros. v. Laird,</u> 463 F.2d 1268 (D.C. Cir. 1972) .....	2-6, 2-12
<u>Illinois Tool Works v. Marshall,</u> 601 F.2d 943 (7th Cir. 1979) .....	2-20
<u>James A. Merritt &amp; Sons, Inc. v. Marsh,</u> 791 F.2d 328, 331(4th Cir. 1986) .....	2-13
<u>Janik Paving &amp; Constr. v. Brock,</u> 828 F.2d 84, 91 (2d Cir. 1987) .....	2-6
<u>Novicki v. Cook,</u> 946 F.2d 938 (D.C. Cir. 1991) .....	2-18
<u>Old Dominion Dairy Products, Inc. v. Secretary of Defense,</u> 631 F.2d 953 (D.C. Cir. 1980) .....	2-20
<u>Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers,</u> 714 F. 2d 163 (D.C. Cir. 1983) .....	2-23
<u>Robinson v. Cheney,</u> 876 F.2d 152, 160-61 (D.C. Cir. 1989) .....	2-16
<u>Transco Security, Inc. v. Freeman,</u> 639 F.2d 318, 324 (6th Cir. 1981) .....	2-12
<u>United States v. Gatewood,</u> 173 F.3d 983 (6th Cir. 1999) .....	2-25

<u>United States ex rel. Barajas v. United States,</u> 238 F.3d 1004 (9th Cir. 2001) .....	2-27
<u>United States v. Hatfield,</u> 108 F.3d 67, 69-70 (4th Cir. 1997) .....	2-23
<u>Wellham v. Cheney,</u> 934 F. 2d 305, 309 (11th Cir. 1991) .....	2-17

#### **U.S. Court of Federal Claims**

<u>Lion Raisin, Inc. v. United States,</u> 51 Fed. Cl. 238 (Fed. Cl. 2001), 2001 U.S. Claims LEXIS 258 ..	2-11
--	------

#### **U.S. District Courts**

<u>Alabama-Tombigbee Rivers Coalition v. Norton,</u> 2002 U.S. Dist. LEXIS 1769, Jan. 29, 2002 .....	2-23
<u>All Seasons Construction, Inc. v. Secretary of the Air Force,</u> Civ. Action No. 05-1187 (W.D. La. 1995) ....	2-13
<u>Art Metal-USA, Inc. v. Solomon,</u> 473 F. Supp. 1, (D.D.C. 1978) .....	2-19
<u>Coccia v. Defense Logistics Agency,</u> 1992 U. S. Dist. LEXIS 17386 (E.D. Pa. 1992) .....	2-17
<u>CONSPEC Marketing and Manufacturing Co., Inc. v. Gray,</u> 1992 U.S. Dist. LEXIS 2845 (D. Kan. 1992) .....	2-23
<u>Delta Rocky Mountain Petroleum, Inc. v. Dep't of Defense,</u> 726 F. Supp. 278, 280 (D. Colo. 1989) .....	2-6
<u>Frequency Electronics, Inc. v. United States,</u> Civ. Action No. 97-230A (E.D. Va. 1997) .....	2-13
<u>Leslie &amp; Elliot Co. v. Garrett,</u> 732 F. Supp. 191, 197-98 (D.D.C. 1990) .....	2-20
<u>Rich-Sea Pak Corp. v. Cook,</u> CV293-44 (S.D. Ga. 1993) .....	2-15
<u>Silverman v. United States Defense Logistics Agency,</u> 817 F. Supp. 846 (S.D. Cal. 1993) .....	2-7, 2-22

**Decisions of the Comptroller General of the United States**

<u>Alamo Aircraft Supply,</u> B-252117, 93-1 CPD 436 .....	2-19
<u>ALB Industries,</u> B-207335, 61 Comp.Gen. 553, (1982) .....	2-17
<u>Howema Bau-GmbH,</u> B-245356, 91-2 CPD 214 (1991) .....	2-17
<u>Quality Trust, Inc.,</u> B-289445, 2002 U.S. Comp. Gen. LEXIS 21 .....	2-20

## CHAPTER 2

### **ADMINISTRATIVE REMEDIES**

#### One Contractor's View of Suspension and Debarment

*Suppose last month you received a show cause letter from the contracting officer demanding that you advise her why she should not terminate your company for default for lack of progress. This month's letter is even worse. You receive by certified mail, return receipt requested, a letter from the contracting officer suspending your company from doing business with the agency. It seems that the agency thinks someone in your company stole government stock footage and used it in a commercial training film. Welcome to the twilight zone, the world of suspension and debarment. You will have more at stake with fewer rights or protections than in any other area of federal procurement. By the time its over, you will feel as if you've lived through the Spanish Inquisition, or at least the Star Chamber.*

© Andrew Mohr 2000

Government Video Presents

Selling to the Feds.com

November 2001

<http://www.sellingtothefeds.com/t66.html>

#### **I. INTRODUCTION AND OVERVIEW.**

- A. Policy. Protection of the Government's interest in contracting only with responsible contractors and not for purposes of punishment.
- B. Historical Background. Development of statutory and administrative debarments, the common rule, reciprocity, and policy/rulemaking groups.
- C. Regulatory framework for suspension and debarment, scope and effect.
- D. Due process required before denying or limiting a property or liberty interest.
- E. Effect of suspension or debarment on subsequent criminal prosecution.

- F. Trends. Continued aggressive agency use of suspension and debarment, legislation of social policy by Legislative and Executive Branches, impact of acquisition reform, employment of felons by contractors, parallel proceedings.
- G. Miscellaneous issues. Lead agency, bankruptcy, waiver of suspension and debarment in plea agreements, and show cause letters.

## II. POLICY BASIS FOR SUSPENSION AND DEBARMENT.

- A. Responsible Contractors. The underlying policy is that agencies may only contract with responsible contractors. FAR 9.402(a). Suspensions and debarments are discretionary measures that help to effectuate this policy. Id. Accordingly, the "[t]est for whether debarment is warranted is the present responsibility of the contractor." Delta Rocky Mountain Petroleum, Inc. v. Dep't of Defense, 726 F. Supp. 278, 280 (D. Colo. 1989).
- B. Protection of Government's Interest--Not Punishment. Agencies may impose these remedies only to protect the Government and not to punish the contractor. FAR 9.402(b).
  - 1. The debarment sanction is a nonpunitive means of ensuring compliance with statutory goals. Janik Paving & Constr. v. Brock, 828 F.2d 84, 91 (2d Cir. 1987).
  - 2. These nonpunitive measures are justified because "[t]he security of the United States, and thus of the general public, depends upon the quality and reliability of items supplied by ... contractors." Caiola v. Carroll, 851 F.2d 395, 398 (D.C. Cir. 1988).

## III. HISTORICAL BACKGROUND.

- A. Early Cases.
  - 1. Debarment is a reasonable tool to protect the Government, but some administrative due process is necessary to assure a fair outcome. Gonzalez v. Freeman, 334 F.2d 570 (D.C. Cir. 1964).
  - 2. Government may suspend a contractor without prior notice, but must grant a swift post-deprivation opportunity to be heard. Horne Bros. v. Laird, 463 F.2d 1268 (D.C. Cir. 1972).

B. 1980s-1990s.

1. Courts generally uphold debarment decisions. Arbitrary and capricious standard of review. Silverman v. United States Defense Logistics Agency, 817 F. Supp. 846 (S.D. Cal. 1993).
2. Congress adds debarment to various laws ("statutory debarments"):
  - a. Buy American, Davis Bacon, Walsh-Healey, Service Contract, Drug Free Workplace, and Clean Air/Clean Water Acts.
  - b. Immigration and Nationality Act Employment Provisions. Executive Order (EO) No. 12989.
  - c. Unfair Trade Practices. Statutes cited in FAR 9.403.
3. Ineligibility Provisions. Congress has included "ineligibility" provisions in various laws. Executive orders and initiatives also expand subject area of ineligibility determinations.
  - a. Military Recruiters on Campus. National Defense Authorization Act (Pub. L. No. 104-106 (1996)). Defense Federal Acquisition Regulation Supplement (DFARS) 209.470. Universities prohibiting military recruitment on campus are prohibited from receiving federal contracts and grants and will be placed on GSA List. DFARS 209.470-1 (Policy) and DFARS 252.209-7005 (contract clauses). DOD has issued an interim rule, effective 13 January 2000, that revises DFARS 209.470, 243.105, and 252.209-7005 (65 Fed. Reg. 2056, January 13, 2000). Universities with institutions of higher education such as law schools that prohibit senior ROTC or military recruiting on campus may now be debarred under the interim rule (formerly only the law school, the "subelement," could be debarred). Update: as of 13 December 2001, the next step in the process is "undetermined." 66 FR 61518.
  - b. Terrorist Countries Can Only Have Small Contracts. Section 843 of the FY 98 National Defense Authorization Act (Pub. L. No. 105-85) requires the SECDEF to develop and maintain a list of all firms and subsidiaries of firms that are not eligible for defense contracts due to ownership or control of the firm by a terrorist

country. DOD contractors must disclose ownership by terrorist countries in all solicitations over \$100,000. DFARS 209.104.70. Contracting officers shall not consent to any subcontract with a firm owned by the government of a terrorist country unless the agency head determines there is a compelling reason. DFARS 209.405-2.

- c. MOH Counterfeiters. Section 8118 of the FY 1999 National Defense Authorization Act prohibits the use of DOD appropriated funds or other funds available to contracting officers to award a contract to, extend a contract with, or approve the award of a subcontract to any person who within the preceding 15 years has been convicted under Section 704 of Title 18, United States Code, of the unauthorized manufacture or sale of the Congressional Medal of Honor. DFARS 209.471 (October 14, 1999).
- d. Child Labor. Executive Order No. 13126 (June 12, 1999) restricts the Government's purchase of goods made by forced or indentured child labor. The head of an agency may terminate a contract or suspend or debar a contractor that has furnished products made by forced or indentured child labor (FAR Case 99-608 pending). Update: Final rule issued 18 January 2001. 66 FR 5346.
- e. Clinton Administration initiative to expand the definition of "contractor responsibility" to include the prospective contractor's compliance with tax, labor, environmental, antitrust, and consumer protection laws. The proposal would amend FAR 9.104-1 (64 Fed. Reg. 37360, July 9, 1999). The proposed rule generated 1500 comments, the largest number of comments in FAR history, with many industry groups and Federal agencies opposed to the proposed rule.

Update: The Federal Acquisition Regulatory Council (FAR Council) published in the Federal Register at 65 FR 80255, December 20, 2000, a final rule addressing contractor responsibility, labor relations costs, and costs incurred in legal and other proceedings. After further review, the FAR Council published an interim rule in the Federal Register at 66 FR 17754, 3 April 2001, staying that rule. The FAR Council intended the stay would last for 270 days from 3 April 2001, until 29 December 2001, or until



finalization of the proposed rule (entitled "Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings-Revocation) that was published in the Federal Register at 66 FR 17758, 3 April 2001, concurrently with the stay, whichever is sooner.

The FAR Council requested comments on the FAR interim rule-stay on the length of the stay. During the stay, the FAR text was restored to the text as it existed before January 19, 2001. In a separate document published concurrently with the interim rule-stay, the FAR Council published the proposed rule, requesting comments under that FAR case on revoking the 20 December 2000, final rule. Bottom Line: the December 2000 responsibility rules were revoked and the old rules restored. 66 FR 66984.

4. Administrative Debarments.

a. Procurement. Federal Acquisition Regulation (FAR), Subpart 9.4 See also DFARS 209.4; Army Federal Acquisition Regulation Supplement (AFARS) 9.4; other agency supplements.

b. Nonprocurement.

(1) Debarment from federal assistance programs grants, loans, loan guarantees, etc., under Government-wide "Nonprocurement Common Rule"(NCR), implemented for DOD at 32 CFR Part 25 (DOD grants regulation).

(2) How different from the FAR?

A company *proposed* for debarment under the NCR is not immediately excluded from Government contracts unless the company was previously suspended. A company proposed for debarment under the FAR is immediately excluded. Also, difference in 'flow-down:" procurement debarment flows down at most to first tier subcontractors, while nonprocurement debarment flows down to every tier affected by federal money. The Interagency Suspension and Debarment Committee (ISDC) is in the process of updating the NCR and redrafting it in "plain language" format.

Update: 23 January 2002, NCR proposed changes published at 67 FR 3266. The amendments propose several important changes.

*First*, mandatory lower tier application of an exclusion would be limited to the first procurement level under a nonprocurement covered transaction.

*Second*, the rule clarifies that the dollar threshold for prohibited lower tier procurement transactions with excluded persons is \$25,000.

*Third*, the rule would eliminate the current requirement that agencies obtain written eligibility certifications from persons with whom they propose to enter into covered transactions. Instead of having to obtain written certifications, agencies would be permitted to use any reasonable method to ensure the enforcement of debarments and suspensions, including accessing an online list of excluded persons maintained by the General Services Administration (GSA).

- C. Reciprocity Between Procurement and Nonprocurement.  
Debarment under either the FAR or Common Rule now results in ineligibility for both contracting and federal assistance programs. EO No. 12689 (1989). Final rule in 1995 applies reciprocity to suspensions and debarments after Aug. 25, 1995. See EO No. 12689 for exceptions.
- D. Government and Private Bar Groups' Impact on Policy/Rulemaking.
  - 1. Debarment, Suspension and Business Ethics Committee (DSBEC). One of 20 standing committees that report directly to the DAR Council. Membership comprised of Army, Navy, Air Force, Defense Logistics Agency, General Services Administration, National Aeronautics and Space Administration, Department of Interior, Small Business Administration, and the Department of Veteran's Affairs. Rotating chair (three-year term) appointed by Director, Defense Procurement, currently filled by DLA. Previously chaired by Army.
  - 2. Interagency Suspension and Debarment Coordinating Committee (ISDC): a non-chartered committee chaired by EPA. Membership is comprised of thirty-three

individual agency representatives of the Executive Branch. Coordinates policy, practices, lead agency, and sharing of information regarding various issues related to suspension and debarment. Serves as an advisory base for the Office of Management and Budget to examine possible changes in suspension and debarment.

3. American Bar Association, Section of Public Contract Law, Committee on Suspension and Debarment. Consists of a Chair, Vice-Chairs, and committee members from the Government and private bar. Studies, discusses, and issues advisory opinions on suspension and debarment issues. In 1994, published a deskbook: The Practitioner's Guide to Suspension and Debarment (updated in 1996).

- E. 21st Century Update: COFC Demands Foolish Consistency. In a judgment published in December 2001, the Court of Federal Claims (COFC) set aside a U.S. Department of Agriculture (USDA) contracting suspension decision. The court ruled that the contracting activity's actions towards the contractor had been so logically inconsistent with the suspension that the suspension and debarment official's (SDO) action was arbitrary and capricious. The USDA had awarded a series of relatively small contracts to a firm during a period when the USDA had evidence that the firm had been dishonest in its prior dealings with the agency. The COFC held, in essence, that the USDA was arbitrary and capricious in later suspending the firm from federal contracting when it was competing for the award of much larger raisin contracts. Lion Raisin, Inc. v. United States 51 Fed. Cl. 238 (Fed. Cl. 2001), 2001 U.S. Claims LEXIS 258.

#### IV. SUSPENSION.

- A. Suspension is an action taken by a suspending official under FAR 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting. FAR 9.403.
- B. Causes for Suspension. FAR 9.407-2(a) through (c) provides that a suspending official may suspend a contractor upon "adequate evidence" of any of the following:
  1. Commission of fraud or a criminal offense in connection with: (a) obtaining, (b) attempting to obtain, or (c) performing a public contract or subcontract;

2. Violation of Federal or State antitrust statutes relating to the submission of offers;
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
4. Violations of the Drug-Free Workplace Act of 1988 (Pub. L. No.100-690);
5. Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. No. 102-558));
6. Commission of an unfair trade practice as defined in FAR 9.403;
7. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor; or
8. Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

C. Standard of Proof for Suspension: Adequate evidence.

1. Suspensions must be based on adequate evidence and not mere accusations. Horne Bros., Inc. v. Laird, 463 F.2d 1268, 1271 (D.C. Cir. 1972).
2. The FAR defines "adequate evidence" as information sufficient to support the reasonable belief that a particular act or omission has occurred. FAR 9.403.
3. "Adequate evidence" has been compared to that which is required to find probable cause sufficient to support an arrest or a search warrant. Transco Security, Inc. v. Freeman, 639 F.2d 318, 324 (6th Cir. 1981). Decision to suspend may be made without notice to the contractor but must include enough information for a meaningful response. Id.
4. An indictment for any of the causes listed in paragraph B, 1-7 above is "adequate evidence" for suspension. FAR 9.407-2(b).

5. Suspension based on an indictment does not violate the presumption of innocence; agency would be irresponsible not to suspend a contractor indicted for procurement fraud. James A. Merritt & Sons, Inc. v. Marsh, 791 F.2d 328, 331 (4th Cir. 1986).
  6. Allegations in a civil complaint may be "adequate evidence" to suspend a contractor, where the complaint is sufficiently detailed in information to enable suspending official to conclude it reasonable that the United States Attorney had compiled evidence supporting or corroborating the allegations, hence providing adequate evidence. All Seasons Construction, Inc., et al. v. The Secretary of the Air Force, Civ. Action No. 05-1187 (W.D. La. 1995).
- D. Immediate Action Required. A legal basis for suspension is not enough to justify suspension. Suspension is appropriate only when, "it has been determined that immediate action is necessary to protect the Government's interest." FAR 9.407-1(b).
- E. Period of Suspension. FAR 9.407-4.
1. A suspension is a temporary measure imposed pending the completion of an investigation or legal proceeding. FAR 9.407-4(a). However, upon initiation of "legal proceedings", suspension is indefinite until proceedings are completed. In such cases, suspensions exceeding three years have been upheld. Frequency Electronics, Inc. v. United States, Civ. Action No. 97-230A (E.D. Va. 1997).
  2. General Rule. The period of suspension should not exceed 12 months if legal proceedings are not instituted within 12 months after the date of the suspension notice. The Department of Justice can request an extension of up to six additional months where no legal proceedings have been initiated. (The suspension may not exceed a total of 18 months unless legal proceedings have been instituted within that period). FAR 9.407-4(b)

## **V. DEBARMENT.**

- A. Debarment. Action taken by a debarring official under FAR 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable specified period. FAR 9.403.

B. Causes for Debarment. FAR 9.406-2.

1. The debarring official may debar a contractor for a conviction of or a civil judgment pursuant to FAR 9.406-2(a) for the following:
  - a. Commission of fraud or a criminal offense in connection with: (1) obtaining, (2) attempting to obtain, or (3) performing a public contract or subcontract;
  - b. Violation of Federal or State antitrust statutes relating to the submission of offers;
  - c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
  - d. Intentionally affixing a label bearing "Made in America" inscription (or any inscription having the same meaning) to a product sold or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. No. 102-558)); or
  - e. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.
2. Under FAR 9.406-2(b), a debarring official may also debar a contractor based upon a "preponderance of the evidence" for the following:
  - a. Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as:
    - (1) Willful failure to perform in accordance with the terms of one or more contracts; or
    - (2) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.
  - b. Violation of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690); or
  - c. Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having

the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. No. 102-558)) (Note: DFARS 209.406-2 requires a determination regarding debarment upon conviction of 10 U.S.C.2410f within 90 days of conviction. A determination not to debar requires a report to the Director of Defense Procurement);

- d. Commission of an unfair trade practice as defined in FAR 9.403;
- e. Attorney General Determination - violation of Immigration and Nationality Act employment provisions (see EO No. 12989).

- 3. Under FAR 9.406-2(c), a contractor may be debarred for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

C. Debarment Criteria/Guidance.

- 1. Standard of Proof for Debarment is preponderance of the evidence: proof that, compared with information opposing it, leads to the conclusion that the fact in issue is more probably true than not. FAR 9.403.
- 2. The mere existence of grounds for debarment does not mean that the debarring official must debar the contractor. Rich-Sea Pak Corp. v. Janet Cook, CV293-44 (S.D. Ga. 1993).
- 3. The debarring official should consider the seriousness of the offense and any remedial measures or mitigating factors. FAR 9.406-1(a). Mitigating factors listed at FAR 9.406-1(a) are:
  - a. Existence of standards of conduct and internal controls at the time of the misconduct;
  - b. Disclosure of the misconduct to the Government;
  - c. Extent of contractor investigation;
  - d. Contractor cooperation in the Government's investigation;
  - e. Contractor payment of civil and criminal fines and restitution;

- f. Implementation of disciplinary measures against wrongdoers;
  - g. Implementation of remedial measures;
  - h. Agreement by contractor to revise standards of conduct and internal controls;
  - i. Contractor has had adequate time to repair his organization; and
  - j. Contractor's management understands the seriousness of the misconduct.
4. Remedial measures must be adequate to convince the debarring official that the Government's interests are not at risk; the Government has broad discretion in ensuring the present responsibility of the contractor such that the remedial measures taken by the contractor adequately protect the Government's interests. Robinson v. Cheney, 876 F.2d 152, 160-61 (D.C. Cir. 1989).
5. Aggravating Factors. Although the FAR does not list aggravating factors, some facts which bear directly on the present responsibility of the contractor are: (a) severity of the wrongdoing; (b) frequency and duration of the misconduct; (c) pattern or prior history of wrongdoing; (d) failure to accept responsibility for the misconduct; (e) positions of the individuals involved; (f) pervasiveness of the wrongdoing in the organization, and (g) failure to take complete corrective action.

D. Period of Debarment. FAR 9.406-4.

- 1. General Rule. Debarment should be for a period commensurate with the seriousness of the offense. Normally, this period should not exceed three years, considering any periods of suspension with several exceptions:
  - a. Drug-Free Workplace Act. A violation of the Drug-Free Workplace Act may result in a debarment of up to five years. FAR 9.406-4(a).
  - b. Debarments based on Attorney General determinations of lack of compliance with the Immigration and Nationality Act employment provisions shall be for one year. FAR 9.406-2(b)(2).



2. Three years is not an absolute limit. Although the FAR sets three years as the general upper limit, the regulations do not prohibit an agency from debarring a contractor for a period greater than three years, providing a reasonable explanation for the extended period is provided. Coccia v. Defense Logistics Agency, 1992 U. S. Dist. LEXIS 17386 (E.D. Pa. 1992) (upholding a 15 year debarment).
3. The period of debarment may be extended if the extension is necessary to protect the interests of the Government; however, the extension cannot be based solely on the grounds supporting the original period. FAR 9.406-4(b). Court upheld extension of debarment period based on conviction for actions similar to those leading to fact based debarment. Conviction was "new fact or circumstance." Wellham v. Cheney, 934 F. 2d 305, 309 (11th Cir. 1991).
4. The debarring official may also reduce the period of debarment. FAR 9.406-4(c).

#### **VI. SCOPE OF SUSPENSION AND DEBARMENT.**

- A. Organizational Elements. Normally extends to all divisions or other organizational elements of a contractor unless specifically limited by the Suspending and Debarring Official. FAR 9.406-1(b) and 9.407-5.
- B. Affiliates.
  1. Business concerns, organizations, or individuals where one either controls or has the power to control the other; or a third party controls or has the power to control both. FAR 9.403.
  2. Must be specifically named, given written notice, and offered an opportunity to respond.
  3. Indicia of control include interlocking management or ownership, identity of interests among family members. ALB Industries, 61 Comp.Gen. 553, B-207335 (1982) (shared facilities and equipment and common use of employees).
  4. "New Company." A business entity organized following the suspension, debarment, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the ineligible contractor. Howema Bau-GmbH, B-245356, 91-2 CPD 214 (1991).

C. Imputation.

1. The fraudulent, criminal, or other seriously improper conduct of an individual may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties on behalf of the contractor, or with the contractor's knowledge, approval, acquiescence. The contractor's acceptance of the benefit derived from the conduct is evidence of such knowledge, approval, or acquiescence. FAR 9.407-5 and 9.406-5(a).
2. Likewise, the misconduct of the contractor may be imputed to an individual within the organization upon a showing that the individual "participated in, knew of, or had reason to know of the contractor's conduct." FAR 9.407-5 and 9.406-5(b). "Should have known" is not sufficient to meet the requirement. Determination must be based on information actually available to the individual. Novicki v. Cook, 946 F.2d 938 (D.C. Cir. 1991).

**VII. PUBLICATION/EFFECT OF A SUSPENSION OR DEBARMENT.**

- A. Consolidated List of Contractors Debarred, Suspended, and Proposed for Debarment. The General Services Administration (GSA) maintains a consolidated list of all contractors debarred, suspended, and proposed for debarment. FAR 9.404.
- B. Web Site: Excluded Parties List System. The GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs is available at <http://www.arinet.gov/eplis>. The web site is updated daily and is accessible free of charge.
- C. Government-Wide Exclusion. Agencies will not solicit offers from, award contracts to, renew or extend existing contracts with, or consent to subcontracts with contractors suspended, proposed for debarment, or debarred, unless the acquiring agency's head or designee determines in writing that there is a compelling reason to do so. FAR 9.405(b).
- D. Additional Effects.
  1. Exclusion from conducting business with the Government as representatives or agents of other contractors and from acting as individual sureties. FAR 9.405(c).
  2. Exclusion from nonprocurement transactions with the Government such as grants, cooperative agreements, scholarships, fellowships, contracts of assistance,

loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements. E.O. 12549.

3. Restrictions on subcontracting. FAR 9.405-2.

a. Subcontracts subject to Government consent - may only be approved/awarded if the agency head or SDO states in writing that there are compelling reasons to do so.

b. Contractors may not enter into subcontracts in excess of \$25,000 with suspended, proposed for debarment, or debarred contractors, unless there is a compelling need.

E. Sales Contracts. Suspension from procurement contracts does not automatically suspend a contractor from sales contracts (contracts to buy items from the Government). Alamo Aircraft Supply, B-252117, Jun. 7, 1993, 93-1 CPD 436. The DLA Special Assistant for Contracting Integrity is the exclusive representative of the Secretary of Defense to suspend and debar contractors from the purchase of federal personal property. DFARS 209.403 (3).

F. Continuation of Current Contracts.

1. Agencies may continue with current contracts despite the imposition of a suspension or debarment. FAR 9.405-1 (a). Agencies may not, however, "renew or otherwise extend the duration of current contracts" without compelling reasons. FAR 9.405-1(c).

2. IDIQ Contracts. Ordering activities may continue to place orders against existing IDIQ contracts. FAR 9.405-1(b). However, if the contract's guaranteed minimum amount has been met or exceeded, no further orders may be placed against the contract. DFARS 209.405-1(b); see, Procurement Fraud Division Note, The Army Lawyer, Dec. 2001 at 35.

## VIII. DUE PROCESS.

A. *De Facto* Debarments. *De facto* debarments are not permitted.

1. An agency cannot simply refuse to contract with a contractor without providing the procedural safeguards afforded a contractor facing debarment. Art Metal-USA, Inc. v. Solomon, 473 F. Supp. 1, 5 (D.D.C. 1978). Agency actions that effectively exclude a contractor without these safeguards may constitute an

impermissible de facto debarment. Old Dominion Dairy Products, Inc. v. Secretary of Defense, 631 F.2d 953 (D.C. Cir. 1980) (Plaintiff sued defendant government after government rejected its bids on account of plaintiff's alleged lack of integrity. Plaintiff claimed it was denied due process because it was not notified of the charges against it and had no opportunity to respond. The district court rejected plaintiff's claims and entered judgment in favor of defendant. The court of appeals held that government's conduct injured a liberty interest of plaintiff; namely, plaintiff's right to be free from stigmatizing governmental defamation. As a result of government's conduct, plaintiff lost government employment and was foreclosed from other employment opportunities).

2. Repeated nonresponsibility determinations may constitute a de facto debarment; fair play requires that if an agency is going to debar a contractor, it must use the debarment procedures. Leslie & Elliot Co. v. Garrett, 732 F. Supp. 191, 197-98 (D.D.C. 1990). But see Cubic Corp. v. Cheney, 914 F.2d 501 (D.C. Cir. 1990) (nonresponsibility determination is not the equivalent of a suspension if it is based on the contractor's lack of integrity).
3. Government may not maintain a list of contractors that it deems not to have complied with a law, regulation, or executive order unless the contractors have been afforded due process prior to placement on the list. Such practice tantamount to debarment. Illinois Tool Works v. Marshall, 601 F.2d 943 (7th Cir. 1979).
4. Intent: the Key Issue. De facto debarment occurs when the government uses nonresponsibility determinations as a means of excluding a firm from government contracting or subcontracting, rather than following the debarment regulations and procedures set forth at FAR Subpart 9.4. A necessary element of a de facto debarment is that an agency intends not to do business with the firm in the future. Quality Trust, Inc., B-289445, 2002 U.S. Comp. Gen. LEXIS 21.

B. Procedural Due Process. See generally DFARS, Appendix H.

1. Notice.
  - a. The contractor is provided written notice of the proposed action. A copy of the administrative record usually accompanies the notice. FAR 9.406-3(c).

- b. The contractor has 30 days within which to submit in person, or in writing, opposition to the action. FAR 9.406-3(c)(4).
- 2. Debarring Officials. DFARS 209.403.
  - a. Army. Commander, U.S. Army Legal Services Agency is the primary "debaring official" for Department of the Army. In addition, the Army has two overseas "debaring officials:" (1) Deputy Judge Advocate, U.S. Army Europe and Seventh Army; and (2) Staff Judge Advocate, U.S. Eighth Army.
  - b. Navy: General Counsel of the Navy.
  - c. Air Force: Deputy General Counsel (Contractor Responsibility).
  - d. Defense Logistics Agency: The Special Assistant for Contracting Integrity.
- 3. Nature of proceedings—two step debarment process:
  - a. Step 1: Presentation of matters in opposition.
  - b. Step 2: Fact finding procedure—occurs only when the contractor's presentation during Step 1 raises a genuine dispute over a material fact.
- 4. Presentation of Matters in Opposition. DFARS H-103.
  - a. Contractor submits, in writing or through a representative, information and argument in opposition to the proposed action, to include any information that may raise a material issue of fact. Written matters in opposition must be submitted within 30 days from receipt of notice of action. DFARS H-103(c).
  - b. In-person presentation. DFARS H-103(b).
    - (1) Informal meeting, non-adversarial in nature.
    - (2) SDO and/or agency representatives may ask questions.
  - c. Contractor may, within five days of submitting these matters, submit a written statement

outlining the material facts in dispute, if any.  
DFARS H-103(a).

5. Fact-finding Proceeding. If material facts are in dispute, there will be no fact finding procedure, unless the action is a suspension and the proposed action is based on an indictment. DFARS H-104(a).
  - a. The SDO designates a fact-finder to conduct a fact-finding proceeding. DFARS H-104(a). Under Army practice, if the suspending and debarring official determines that there is a genuine dispute as to a material fact, he will appoint a military judge to conduct a hearing.
  - b. Procedures.
    - (1) Normally held within 45 working days of the presentation of matters in opposition. DFARS H-104(b).
    - (2) Government and contractor may appear in person and present evidence DFARS H-104(c).
    - (3) Federal Rules of Evidence and Civil Procedure do not apply. Hearsay may be presented. DFARS H-104(d).
    - (4) Live testimony is permitted. DFARS H-104(e).
  - c. The fact-finder will provide written findings of fact to the SDO. DFARS H-106(a). Standard of proof: preponderance of the evidence. DFARS H-106(b).
6. Notice of decision. The suspending and debarring official will notify the contractor of his decision within 30 days after final opposition submitted (where no fact finding) or 30 days after fact finding complete. DFARS H-106(d).
7. Review of Suspending and Debarring Official's decision.
  - a. No agency review.
  - b. Judicial review. An agency's decision to debar a contractor is subject to review under the Administrative Procedure Act. Silverman v. Defense Logistics Agency, 817 F. Supp. 846, 848

(S.D. Cal. 1993). The agency decision is subject to an arbitrary and capricious standard of review. Id.

- c. Exhaustion of administrative remedies required before court will review administrative process. Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers, 714 F. 2d 163 (D.C. Cir. 1983). CONSPEC Marketing and Manufacturing Co., Inc. v. Gray, 1992 U.S. Dist. LEXIS 2845 (D. Kan. 1992).
- d. APA Review limited to administrative record unless contractor can make a strong showing of government bad-faith or improper conduct in making the decision. Alabama-Tombigbee Rivers Coalition v. Norton, 2002 U.S. Dist. LEXIS 1769, Jan. 29, 2002.

#### **IX. EFFECT ON A SUBSEQUENT CRIMINAL PROSECUTION.**

- A. Double Jeopardy Clause. The double jeopardy clause is not a bar to a later criminal prosecution because debarment sanction is civil and remedial in nature. The mere presence of a deterrence element is insufficient to render a sanction criminal, as deterrence "may serve civil as well as criminal goals." Hudson v. United States, 118 S. Ct. 488 (1997).
- B. Debarment is a "Civil Proceeding," Not a Criminal Penalty. In United States v. Hatfield, 108 F.3d 67, 69-70 (4th Cir. 1997), the court concluded debarment is a "civil proceeding," not a criminal penalty.

#### **X. TRENDS.**

- A. Aggressive Use of Suspension and Debarment. Agencies continue the aggressive use of suspension and debarment, as evidenced by recent statistics. See Steven A. Shaw, Suspension and Debarment: The First Line of Defense Against Contractor Fraud and Abuse, *The Reporter*, Vol. 26, No. 1.
- B. Use of Suspension and Debarment to Enforce Social Policy. Congress and President continue to use suspension and debarment to enforce social policy.
- C. Impact of Acquisition Reform on Suspension and Debarment.
  - 1. Emphasis on review of past performance raises "de facto debarment" concerns.
  - 2. Some certification requirements eliminated by regulations implementing the Clinger-Cohen Act of 1996

(subcontractor kickbacks, negotiation representations, commercial item certifications).

3. Amendments to the Procurement Integrity Act, 41 U.S.C. § 423, eliminated procurement integrity certifications. Implementing regulations for the Procurement Integrity Act are currently being rewritten in plain language. 65 FR 16758, March 29, 2000. Comments regarding proposed rule are due by May 30, 2000. Update: Final rule issued 20 March 2002. 67 FR 13057.
  4. "Partnering with contractors" philosophy raises concerns of overlooking fraud.
  5. Nonprocurement Common Rule (32 CFR Part 25) has been rewritten in plain language. 67 FR 3266.
- D. GSA CODE FF: Restrictions on Employment of Contractors Convicted of Fraud under DOD contracts. DOD has issued a DFARS amendment expanding the list of positions in which contractors and subcontractors may not employ convicted felons. Term of the prohibition is a minimum of five years. This rule further implements 10 U.S.C. § 2408. DFARS 203.570-2 and 252.203-7001 (March 25, 1999). DOD policy states that:
- (a) A contractor or subcontractor shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD, to serve-
    - (1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;
    - (2) On its board of directors;
    - (3) As a consultant, agent, or representative; or
    - (4) In any capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.
- DFARS 203.570-2(a).
- E. DOJ "Parallel Proceedings Philosophy." Cases are evaluated from initiation for civil as well as criminal action. Encourages aggressive use of suspension and debarment remedy.



- F. Progress Payment Fraud. A recent Sixth Circuit case illustrates difficulties in obtaining a conviction for progress payment fraud where the contractor has paid some, but not all, subcontractors. United States v. Gatewood, 173 F.3d 983 (6th Cir. 1999).

## **XI. MISCELLANEOUS ISSUES.**

- A. Lead Agency Determinations: "Yockey Memorandum," September 28, 1992. Agency with the predominant financial interest" will assume lead to debar. Subcontracting interests also considered. Issue: how do we determine predominant financial interest? Sheer dollar amounts; dollar amounts in current fiscal year, or over a period of time; "importance" of program?
- B. Bankruptcy. Automatic stay provisions of the U.S. Bankruptcy Code do not prohibit suspension and debarment. Eddleman v. U.S. Dep't of Labor, 923 F.2d 782 (10th Cir. 1991) (DOL's pursuit of debarment was primarily to prevent unfair competition in the market by companies who pay substandard wages and thus a proper exercise of its police power and thus not subject to automatic stay).
- C. Waiver of Suspension and Debarment Remedy in Plea Agreements. AUSA's have no authority to waive the remedy.
- D. Show Cause Letters. Inquiries from agencies to contractors where there is insufficient evidence of misconduct to suspend or debar. Highly recommended by Yockey Memorandum: "[w]hen appropriate prior to suspension, I want companies to be informed that we have extremely serious concerns with their conduct, that their suspension is imminent and that they may contact the suspension official, or his designee, if they have any information to offer on their behalf."

## **XII. ADMINISTRATIVE SETTLEMENT AGREEMENTS IN LIEU OF SUSPENSION AND DEBARMENT.**

- A. Desired Preconditions.
1. Restitution.
  2. Correction of the flawed procedures that resulted in the misconduct.
  3. Discipline of blameworthy individuals.
  4. Assurance that appropriate standards of ethics and integrity are in place and are working.
  5. Otherwise satisfactory contract performance.

6. SDO is convinced that contractor is not so lacking in present responsibility as to threaten integrity of Government procurement.

B. Common Features.

1. Term of three years.
2. Company has installed an ethics code, government contracting policies and procedures, and other appropriate controls (quality control, internal audit, personnel background checks, etc.). Periodic training of employees.
3. Contractor-financed outside audits of the ethics process and other corrective action. Employment of ombudsman (external) and/or ethics director (internal).
4. Periodic reporting to debarring official.
5. Provision for compliance visit by enforcing agency.
6. Violation of the terms of the agreement is separate grounds for debarment.
7. Administrative fee of \$2,000 - \$10,000 depending on size of company to reimburse expenses associated with compliance visits.
8. Investigative cost reimbursement where substantiated and unusually high due to contractor lack of cooperation.

- C. Interrelationship with qui tam cases: Ninth Circuit Muddies the Water. The relator filed a *qui tam* action against the corporation, his former employer, for submitting falsified records to the United States and failing to complete all required testing of flight data transmitters (FDTs). The United States intervened in the suit, settled it, and paid the relator his share of the recovery. The United States then prosecuted a criminal case based on the corporation's (1) false reporting, (2) incomplete testing, and (3) use of inadequate damping fluid in the FDTs. After that case ended, the relator filed another *qui tam* action based on the corporation's use of the inadequate damping fluid. The United States declined to intervene, and the corporation obtained dismissal of the second civil suit. The United States initiated a debarment proceeding against the corporation. After those two parties settled that proceeding, the relator sought a share of the cash payment

promised as part of the settlement. The district court denied his motion for an order directing the United States to give him a share of those proceeds. The instant court reversed. The debarment proceeding was an "alternate remedy" within the meaning of 31 U.S.C.S. § 3730(c)(5). The court reversed and remanded for further proceedings. Further, the court noted that if the relator was entitled to receive a share of the settlement, he was entitled to a share of all the proceeds recovered, not just the cash portion of the settlement. United States ex rel. Barajas v. United States, 238 F.3d 1004 (9th Cir 2001).

#### **XIII. SUSPENSION/DEBARMENT SUMMARY AND CONCLUSION.**

- A. DOD agencies continue to use suspension and debarment as an effective fraud-fighting tool. Civilian agencies are increasingly interested in expanding the use of the remedy.
- B. Legislative and Executive Branches continue to use suspension and debarment to enforce social policy.
- C. Important to coordinate suspension and debarment actions among all agencies with interests due to reciprocal effects.

#### **XIV. COORDINATION OF REMEDIES**

- A. References.
  - 1. Department of Defense Directive 7050.5, Subject: Coordination of Remedies for Fraud and Corruption Related to Procurement Activities, 7 June 1989 [DOD Directive 7050.5].
  - 2. Federal Acquisition Regulation, Subpart 9.4 -- Debarment, Suspension, and Ineligibility.
  - 3. Defense FAR Supplement, Subpart 209.4 -- Debarment, Suspension, and Ineligibility [DFARS].
  - 4. Defense Logistics Agency Regulation 5500.10, Subject: Combating Fraud in DLA Operations.
  - 5. Army Regulation 27-40, Litigation, Chapter 8, Remedies in Procurement Fraud and Corruption, 19 September 1994 [AR 27-40].
  - 6. SECNAV INSTRUCTION 5430.92B, Subject: Assignment of Responsibilities to Counteract Fraud, Waste, and Related Improprieties Within the Department of the Navy.

7. Air Force Policy Directive 51-11, Subject: Coordination of Remedies for Fraud and Corruption Related to Air Force Procurement Matters, 21 October 1994.
8. Air Force Instruction 51-1101, Subject: The Air Force Procurement Fraud Remedies Program. November 1994.

B. Introduction.

1. Agency regulations implement DOD Directive 7050.5. Copy found at Appendix D, AR 27-40.
2. The fraud mission established in DOD Directive 7050.5. Each of the DOD Components shall monitor, from its inception, all significant investigations of fraud to ensure all appropriate remedies are pursued expeditiously.
3. The "inception" of a fraud investigation.
4. DODIG oversight responsibility.
5. Determination of Lead Agency Responsibility. Interagency coordination is required in cases where the contractor has contracts with more than one federal agency. The DOD agency that has the predominant financial interest should be designated the "lead agency." Yockey Memorandum (Under Secretary of Defense, September 28, 1992). That agency has authority to suspend or debar the contractor. In the event of disputes among DOD agencies on this issue, the matter will be referred to the Director of Defense Procurement for resolution.

C. Remedies.

1. Criminal prosecution.
2. Civil litigation.
3. Contract remedies.
4. Administrative remedies.
5. Suspension and debarment.
6. Administrative settlement agreements.

D. Key Elements of the Army Procurement Fraud Program.

1. Procurement Fraud Division (PFD) is single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies in significant cases of fraud or corruption relating to Army Procurement.
2. Fraud remedies coordination assures that commanders and their contracting officers take, in a timely manner, all applicable criminal, civil, contractual, and administrative remedies.
3. Decentralized responsibility upon the local commander for operational matters such as reporting and remedial action.
4. Continuous case monitoring by The Judge Advocate General's PFD from the time suspected fraud is first reported until final disposition.
5. Command-wide fraud awareness training.

E. PFD Management Responsibilities.

1. Coordinate disposition of, and monitor, Army contract fraud and corruption cases.
2. Coordinate remedies.
3. POC for receipt and dissemination of DOD safety alerts in fraud cases.
4. POC in Army for voluntary disclosure cases.
5. Maintain active liaison with USACIDC, DCIS, and other investigative agencies.
6. Coordinate with DOJ and United States Attorneys regarding significant civil and criminal procurement fraud cases.

F. MACOM And Subordinate Command Programs.

1. SJAs at MACOMs appoint a Procurement Fraud and Irregularities Coordinator (PFIC) for their command.
2. Chief Counsel and SJAs at Major Subordinate Commands with procurement advisory responsibility appoint an attorney as a Procurement Fraud Advisor (PFA) to manage the fraud program at their installations.

3. Reports/Recommendations transmitted through command channels to the PFIC for the affected MACOM.
  4. PFAs and PFICs assure prompt notification of appropriate local CID or DCIS activities.
- G. Procurement Fraud Advisors (PFAs): The Key To A successful Program.
1. Attorneys.
  2. Qualifications -- Working knowledge of procurement, criminal, and civil litigation law, and familiarity with government agencies in the acquisition area.
- H. PFA Tasks And Responsibilities.
1. Recognize the indicators of possible procurement fraud or irregularity and help identify potential cases.
  2. Prepare Flash Reports (AR 27-40, para. 8-5b).
    - a. Required for all cases if there is substantial indication of fraud and/or the matter is referred for investigation.
    - b. Dispatch immediately to PFD and major command by fax. (PFD fax is (703) 696-1559).
  3. Coordinate investigative and remedial actions at the installation/activity.
    - a. Provide support to criminal investigators and coordinate remedies actions with them.
    - b. Coordinate remedial actions and necessary participation by installation/activity personnel. Make sure that funds recovered in fraud recoveries that can be returned to the agency (rather than the U.S. Treasury) are credited to agency accounts, such as where contracts remain open. Obtain necessary fund citations and accounting classifications. Determine whether settlements can include return of products or services as well as money.
    - c. Interface with local DOJ officials.
    - d. Help identify and solve systemic or internal control breakdowns that may have contributed to problems.

4. Prepare comprehensive remedies plan (AR 27-40, para. 8-8).
  - a. Should be prepared in close coordination with investigators and contracting officer but is PFA's responsibility.
  - b. Must consider all remedies.
  - c. Must consider adverse impact and safety concerns. Should support preparation of a comprehensive victim impact statement (VIS).
  - d. Forward VIS to PFD and the major command in significant cases.
  - e. Significant cases defined as cases involving:
    - (1) Loss greater than \$100K;
    - (2) Top 100 DOD company;
    - (3) Bribery, gratuities, or conflict of interest; or
    - (4) Safety Issues.
5. Assist in preparation of necessary contracting officer's report (DFARS 9.406-3) and litigation reports (para.. 8-9, AR 27-40).
6. Inform MACOM and PFD of initial contact with U.S. Attorney's Office or DOJ.
7. Acts as installation/activity central coordination point for fraud matters.
- I. Features Of Successful Installation Level Procurement Fraud Programs.
  1. An effective working relationship between the criminal investigator, the PFA, and contract officers.
  2. An aggressive approach that includes fraud awareness training and informational activity by the PFA.
  3. An effective working relationship between the local U.S. Attorney's Office and the installation command counsel/staff judge advocate.
  4. An active installation case management team and/or coordinating committee which both facilitates remedies

coordination in individual cases and identifies and solves management/ internal controls weaknesses.

5. Command support.

**XV. CONCLUSION.**